

Remarks

Claims 18-21 are currently pending. In view of the comments below, reconsideration of the present application is respectfully requested.

Applicants' Response to Rejection of Claims Under 35 U.S.C. §103

Claims 18-21 have been rejected under 35 U.S.C. §103 as allegedly unpatentable over U.S. Patent No. 5,667,824 to Ream et al. ("Ream") in view of U.S. Patent No. 4,975,288 to Hager et al ("Hager"), U.S. Patent No. 810,210 to Laws ("Laws"), U.S. Patent No. 3,062,662 to McDonald ("McDonald"), and the press release to "LMC International". Applicants respectfully traverse these rejections on the grounds that the Examiner has failed to establish a *prima facie* case of obviousness. Specifically, the references include no motivation to modify or combine the references, the teachings of the references are not properly combinable, and even if combined, the references fail to teach the invention as claimed. Therefore, reconsideration and withdrawal of the rejections are respectfully requested.

The present invention includes a method of making a three-material lollipop product which includes a candy coated, center-filled gum. The lollipop is prepared by (1) extruding a gum material, (2) transporting the extruded gum to a batch forming mechanism, (3) injecting a center-fill into the gum, (4) coating the gum material with a molten candy material, and (5) forming individual lollipop balls from said candy coated gum material in a lollipop forming mechanism.

In order to establish a *prima facie* case of obviousness, (1) a reference or combination of references must provide some suggestion or motivation to modify the reference or to combine the teachings; (2) there must be a reasonable expectation of success; and (3) there must be a teaching or suggestions of all claim limitations. The teachings must consider the reference as a whole and the proposed modification cannot render the prior art unsatisfactory for its intended purpose.

Ream teaches a method of preparing a miniature confection which is preferably a gum. In Ream's method, a sheet of gum material is extruded and then cooled and formed into a "webbed sheet" by passing the gum sheet through a series of rollers. The "webbed sheet" is removed as a whole and individual gum pieces are broken off of the mat. Cooling is an essential step of the Ream method as the low temperature is required to prevent tackiness and may be achieved through a nitrogen cooling system. See Ream column 4, lines 21-24. There is no teaching or suggestion in Ream to provide a gum piece which is center-filled or includes a candy coating.

Hager provides a method of preparing a center-filled chewing gum which provides an advantage over prior methods of preparing center-filled gums in that the gum pieces may include 35-40% by weight center-fill. This is compared to prior methods which could only achieve 12-17% by weight center-fill. The center-filled gum is prepared from a filled extruded rope of gum, which is incompatible with the webbed mat forming device provided by Ream which requires a sheet of gum.

Laws is teaches a method of preventing gum from becoming hard and brittle, which results in a commercially unacceptable product. Laws teaches forming hollow chewing gum tubes and filling the individual hollow gum pieces with a liquid which is absorbed into the gum piece to compensate for moisture lost as the gum dries. A moisture-resistant coating is first applied to the interior of the hollow tube to prevent the liquid center from transferring too quickly to the gum piece. Laws does not provide a center-filled gum as in the present invention. The liquid added to the center is not meant to provide a "burst" of flavor upon chewing the gum piece as the liquid is meant to be transferred to the gum material prior to reaching the consumer in order to "keep the piece of gum in its natural moist and plastic condition." See Laws column 1, lines 23-24.

The method of Ream is itself not compatible with the preparation of a center filled gum. Hager requires the preparation of a liquid filled rope and Laws requires the filling of a hollowed gum piece. Since Ream provides for neither the preparation of an extruded rope of gum nor a

hollowed gum piece, the combination of the teachings of Ream with either Hager or Laws, the would not result in a center-filled gum piece.

To combine the teachings of Ream with either of the recited other references is improper absent some showing of motivation to combine them. In this case, not only is there no motivation, but any attempt to combine would require changes to Ream which would destroy that references intent and purpose.

The Examiner has also alleged that the combination of the teachings of McDonald and LMC International provides a candy coated gum which may be shaped into a ball. Although McDonald does provide a candy coated gum, McDonald specifies that the coating is applied by first placing a lollipop stick in a gum piece and then dipping the gum piece at least once into a hot candy syrup and then placed on a flat surface for cooling. Not only is there no teaching to provide the lollipop confection in a ball shape, McDonald teaches away from any other than the "bell-shaped" confection that results from the drying on the flat surface. McDonald requires the flat edge which is "a particularly desirably shape for the confections as it enables the same to be advantageously displayed for sale." Column 2, lines 46-48.

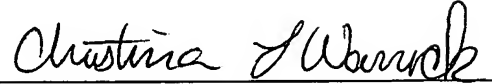
For the reasons set forth above, there is no motivation in any of the references to combine the teachings of each. Even if combined, the references would not lead one of ordinary skill in the art to prepare the invention of the present claims.

In view of the above amendments and remarks, Applicants respectfully submit that the present application, including claims 18-21 is now in condition for allowance. Favorable action thereon is respectfully requested.

Should the Examiner have any questions with respect to the above amendments and remarks, the Examiner is respectfully requested to contact Applicants' undersigned counsel at the telephone number below.

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Respectfully submitted,

A handwritten signature in cursive script, reading "Christina L. Warrick", written in dark ink.

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